

SUPERIOR COURT
OF THE
STATE OF DELAWARE

M. JANE BRADY
JUDGE

NEW CASTLE COUNTY
COURTHOUSE
WILMINGTON, DE 19801-3733

April 27, 2006

RE: Aretha Connelly-Yancy v. Nationwide General Insurance Company
C.A. No.: 04C-05-166-MJB

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This is my decision regarding whether evidence of the PIP settlement entered into between Plaintiff and Defendant may be introduced in the instant action.

Procedural History

The instant action was filed on May 18, 2004 by Plaintiff Aretha Connelly-Yancy (“Ms. Yancy”) against Defendant Nationwide General Insurance Company (“Nationwide”). In the pre-trial stipulation, the parties identified an issue regarding whether evidence of a previous settlement for Personal Injury Protection (“PIP”) benefits Ms. Yancy reached with

Defendant Nationwide was admissible in this case. For the reasons set forth below, I hold such evidence is not admissible in this case.

Facts:

The instant action arose out of the alleged negligent, careless and reckless operation of a motor vehicle by an unknown Defendant on or about April 19, 2003 that caused injuries to Ms. Yancy. At the time of the motor vehicle collision, Nationwide provided insurance coverage for Ms. Yancy in the form of uninsured motorist coverage and PIP coverage. After separate litigation was filed by the Plaintiff, Nationwide reached a settlement for payment of the PIP claim with Ms. Yancy. In this action, Nationwide contests payment of amounts sought by Ms. Yancy under the uninsured motorist provision of the Nationwide policy. Ms. Yancy seeks to introduce evidence of her settlement with Nationwide for the PIP amounts; in particular, to proffer that the PIP claims adjustor rejected the assessment made by the physician hired by Nationwide and accepted the opinion of other physicians hired by Plaintiff, reversed the company's previous position, and paid the PIP claim. Nationwide opposes the introduction of such evidence.

At issue before the Court is whether such evidence might be admissible and if so, whether the Court will order the deposition of the PIP Claims Representative.

Applicable Law:

There are many reasons a party may choose to settle litigation and they are not always based on the merits of either party's position. The availability of witnesses or evidence, a subjective assessment of risk of exposure and certainty of a settlement, the nature of the claim and many other factors may affect such a decision. It is not particularly probative that a person, who is not the party responsible for the resolution of this matter, made such a decision in another matter.

Delaware Rule of Evidence 408 provides in relevant part:

Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount is not admissible to prove liability for or invalidity of the claim or its amount.

*Alexander v. Cahill*¹ is directly on point. The Court stated:

“In deciding whether to admit settlement advice for another purpose, a trial court must carefully exercise its discretion and balance the probative value of the evidence or a permissible

¹ 829 A.2d 117 (Del. 2003).

purpose against the prejudicial effect and risk the evidence will be used for an improper purpose.” When the judge discloses the fact of settlement, it is usually for the purpose of avoiding jury confusion or informing the jury of the alignment of the parties. When a party seeks to admit evidence, disclosing the facts of any settlement (not just the fact of settlement), however, we believe that at trial judge must be more skeptical of the party’s purpose. Advocacy lends itself to creative arguments purporting to offer the evidence for the purpose of impeachment or to enhance credibility, but may in reality be an attempt to persuade the jury that a claim has no validity, that another party is liable or that the amount of damages should be discounted to avoid a windfall to the plaintiff[s].²

The Court in *Alexander* ultimately held D.R.E 408 barred evidence of the third party settlement amounts because they were introduced “...for the purpose of persuading the jury that the persons to blame for the accident had already admitted liability...”³

Similarly, Plaintiff seeks to introduce evidence Nationwide settled on the PIP claim in order to persuade the jury that Nationwide is also liable on the uninsured motorist claim. D.R.E. 408 precludes the admission of such evidence in the instant action.

As stated in *Alexander*:

“Two principles underlie Rule 408: 1) the evidence of compromise is irrelevant since the offer may be motivated by a desire to terminate the litigation rather than from any concession of weakness of position; and 2) public policy favors compromise in settlement disputes.”⁴

² *Id* at 125.

³ *Id* at 127.

⁴ *Id* at 123.

In this case, the probative value of the settlement is outweighed by the prejudicial effect of the proposed evidence. And, as there is no real issue of jury confusion or the potential for the jury to misunderstand the alignment of the parties in this case, which is rather straightforward, there is no need to disclose the fact of a settlement.

Conclusion:

For the reasons stated herein, evidence regarding the PIP settlement is inadmissible. The Court will not, therefore, order the deposition of the PIP Claims Representative.

IT IS SO ORDERED.

_____/s/____

M. Jane Brady
Superior Court Judge